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IN THE SUPREME COURT

No. 643

STATE

vs.

C. H. BUNN

STATEMENT OF JURISDICTION

Pursuant to Rule 12 of the Supreme Court of the United States, the defendant in above entitled action files this to show the basis upon which he contends that the Supreme Court of the United States has jurisdiction to review and determine the above entitled action;

(1) The statute believed to sustain jurisdiction of the Supreme Court of the United States is Section 344 of Title 28, United States Code Annotated; which provides that any action involving the validity of any statute, upon the question that the statute is repugnant to the Constitution of the United States or Amendment thereto, may be reviewed upon appeal to the Supreme Court of the United States from a final judgment of any state court of last resort, when the decision and judgment thereof is in favor of the validity of such statute.

(2) The statute or ordinance believed to be invalid is Ordinance No. 845 of the City of Durham, North Carolina,

which is recorded in Ordinance Book 3 and at page 24 thereof; which ordinance generally forbids persons from handling, or exposing any part of their bodies bare, or aid or suggest any other person to expose any part of their bodies to any poisonous reptiles; declaring such a public nuisance and providing punishment for such.

(3) The date of judgment sought to be reviewed was the 7th day of January, 1949, a copy of which is hereto attached.

(4) The date the petition for appeal was applied for and granted was the 7th day of February, 1949.

(5) The action above entitled and from whence the defendant appeals was a criminal action charging the defendant with violating the aforesaid ordinance, by holding in his bare hands a poisonous reptile. The act complained of was performed while the defendant was in a church and while engaged in religious services. The defendant contends that enforcement of the aforesaid ordinance prevents him from exercising the right of religious liberty guaranteed him by the First and Fourteenth Amendments to the Constitution of the United States; in that he is restricted thereby from taking up in his bare hands poisonous reptiles while performing his ceremony of worship to God according to the dictates of his religious belief; and thus is substantially injured by such restriction. The jurisdiction of the Supreme Court of the United States to review and determine actions involving the denial of alleged religious liberty is believed to be sustained by the following cases: *Tucker* v. *State of Texas,* 66 S. Ct. 274, 326 U. S. 517, 90 L. Ed. 274; *and Lovell* v. *City of Griffin,* 58 S. Ct. 666, 82 L. Ed. 949.

(6) That attention is directed to following manner in which the defendant asserted the invalidity of the ordinance aforesaid the rulings of the court thereon and reference to pages in the record and case filed in the Supreme Court

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of North Carolina upon which such appears: The court of first intsance was the Recorder's Court of Durham Township, which is not a court of record, and the proceedings therein does not appear in the record. Oral motions to dismiss the action before a plea was entered, and after the State presented its evidence were made therein. Upon appeal to the Superior Court of Durham County, and trial *de novo,* the defendant moved to dismiss the action before entering a plea upon grounds that the ordinance aforesaid, which the defendant was charged with violating, was repugnant to the First and Fourteenth Amendments to the Constitution of the United States. Motion overruled by the presiding judge and exception entered—Record, P. 9. A similar motion to dismiss the action was made at the close of the State's evidence, overruled, and exception entered—Record, P. 14; and again after verdict of the jury, the defendant moved to set the verdict aside, overruled and exception entered—Record, P. 14. Upon entering judgment upon the verdict, the defendant excepted by appeal to the Supreme Court of North Carolina. Record, P. 14. The Supreme Court of North Carolina affirmed the judgment of the trial court by its opinion hereto attached.

This being the 7th day of February, 1949.

C. H. Bunn,
Defendant.

APPENDIX "A"

SUPREME COURT OF NORTH CAROLINA, FALL TERM, 1948

No. 722

STATE v. BENJAMIN R. MASSEY AND C. H. BUNN

Appeals by defendants from Bone, J., March Term, 1948, of Durham.

Criminal prosecutions on separate warrants charging each of the defendants, in identical language and differing only as to date, with endangering the public health, safety and welfare by handling poisonous reptiles in such manner as to constitute a public nusiance in violation of an ordinance of the City of Durham forbidding such conduct or practice.

Both defendants were convicted in the Recorder's Court of Durham Township, and from judgments pronounced, appealed to the Superior Court of Durham County, where by consent the cases were consolidated for trial.

The facts are not in dispute. On the evening of 1 and 8 November, 1947, several policemen of the City of Durham visited the Zion Tabernacle Church, situate within the corporate limits of the City of Durham, and on each occasion found there a large gathering of men, women, and children, engaged in religious services. During the services they saw the defendant, C. H. Bunn, on 1 November and the defendant, Benjamin R. Massey, on 8 November, while standing in the pulpit, take into his bare hands a poisonous snake of the copperhead or highland moccasin variety and hold it within view of the congregation. No one was harmed by the snake on either occasion. The snakes were later tested by placing healthy rats with them which they immediately struck with their fangs and the rats died within a few minutes.

The defendants concede that their conduct falls within the condemnation of the ordinance, but they plead not guilty on the ground that the ordinance impinges on their freedom of religious worship and is therefore void.

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Verdict: Guilty as charged in each warrant.

Judgments: Fine of $50 and costs in each case.

The defendants appeal, assigning errors.

Attorney-General McMullan and Assistant Attorneys-General Bruton, Rhodes and Moody for the State.

C. H. Bunn and Benjamin R. Massey, *In propria persona*, defendants, appellants.

Stacy, C. J. The ordinance inveighs against the handling of venomous and poisonous reptiles in such a manner as to endanger the public health, safety and welfare and none other.

The police are required to seize reptiles handled in an exposed way and have them examined by the health department. If found to be venomous they are to be destroyed; otherwise they are to be returned to the one from whom they were taken. Manifestly, then, the ordinance was enacted as a protective measure and its primary purpose is not to interfere with any ritual which the defendants may wish to observe. They are at liberty to handle reptiles in public, if they so desire; provided the reptiles are harmless to human safety, health, and welfare.

The defendants say, however, that the handling of poisonous reptiles without harm to themselves or others is a power which they are commanded to show to the people, and to extract the venom of the reptiles renders them useless for such purpose. It was suggested on the argument by the defendants in person that in all probability we would not understand this. Even so, as a matter of law the case comes to a very simple question: which is superior, the public safety or the defendants' religious practice? The Authorities are at one in holding that the safety of the public comes first. Kirk v. Com. of Virginia, 186 Va. 839, 44 S. E. (2d.) 409; Lawson v. Com. of Kentucky, 291 Ky. 437, 164 S. W. (2d.) 972; Reynolds v. United States 98 U. S. 163, 25 L. Ed. 244; Latter-Day Saints v. United States, 136 U. S. 49, 34 L. Ed. 478.

No detailed analysis of the ordinance is required since the defendants concede that unless it impinge on their

freedom of religious worship, they are in defiance of its terms.

The record is devoid of any reversible error, hence the verdicts and judgments will be upheld.

No error.

Filed Jan. 7, 1949.

(1472)